IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5995 OF 2007

Rajjak Papamiya Shaikh .. Petitioner

Versus

Mrs.Jabin Rajjak Shaikh .. Respondent

Mr.K.K.Waghmare for petitioner

Mr.U.B.Nighot for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 28th November 2007

P.C.

. While arguing this petition, learned Advocate appearing for petitioner fairly concedes that the application for amendment does not meet the requirements of the amended C.P.C. and more

particularly Order VI Rule 17 (Proviso). In such circumstances, he does not wish to challenge the impugned order but while withdrawing this petition, he seeks liberty from this Court to file fresh application for amendment before the trial court.

2. In my view, it is for the petitioner to decide whether to file fresh application or not. The order under challenge cannot be interfered with because it proceeds on the basis that necessary averments are lacking. That is clear from a perusal of para 5 of the impugned order. In such circumstances, the petition is allowed to be withdrawn and dismissed as such. However, the petitioner would be at liberty to file another application for amendment and such application, if filed, should be dealt with on merits and in accordance with law.

(S.C.Dharmadhikari, J)